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4 *Attorneys for Debtor*

5 **UNITED STATES BANKRUPTCY COURT DISTRICT OF ARIZONA**

6 *In re:*

7 GARY GILLIN  
8 ANDREA GILLIN  
9 *Debtor*

10 No. 0:13-BK-21897

11 Chapter BK 13

12 GARY GILLIN  
13 ANDREA GILLIN  
14 Movant,  
vs.  
PARTNERS FOR PAYMENT RELIEF DE  
II LLC  
Respondents.

15 ADV NO. 0:14-ap-00806-PS

16 **COMPLAINT TO DETERMINE THE  
VALIDITY, PRIORITY OR EXTENT  
OF A LIEN OR OTHER INTEREST  
IN PROPERTY**

17 Debtor and Plaintiffs in the above captioned matter, for their Complaint to Determine the  
18 Validity, Priority or Extent of a Lien or Other Interest in Property allege:

19 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; 11 U.S.C.  
20 § 506(a), 11 U.S.C. § 1123(b)(5) and Rule 7001 et seq. Rules of Bankruptcy Procedure. This is a  
21 core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), 157(b)(2)(B) and 157(b)(2)(K).

22 2. Plaintiffs reside in Mohave County, Arizona and are the Debtors in the above  
23 captioned Chapter 13 proceeding.

24 3. Defendant, PARTNERS FOR PAYMENT RELIEF DE II LLC (hereafter "Partners")  
upon information and belief, is licensed to make, issue, write or otherwise purchase and acquire  
residential mortgage loans in the state of Arizona.

25 4. Plaintiffs, at the time of filing of the case, were the owners of certain real property  
26 located at 2227 LUCILLE AVE, KINGMAN AZ 86401 (the "Property") with a legal description

as follows:

1           LOTS TWENTY NINE (29) THROUGH THIRTY-TWO (32), INCLUSIVE,  
2           BLOCK 130, GOLDEN GATE ADDITION, ACCORDING TO THE PLAT  
3           THEREOF, RECORDED JANUARY 13, 1930, IN THE OFFICE OF THE  
4           RECORDER OF MOHAVE COUNTY, ARIZONA. APN: 311-14-101A

5.       The Plaintiffs believe that the property is worth somewhere between \$49,965.00 and  
6.       \$87,993.00 based on the Mohave County Assessor valuation, attached as **Exhibit "A"**, and direct  
7.       knowledge of the Kingman Market, AND based on the Analysis by Zillow, copy attached hereto  
8.       as **Exhibit "B"**.

9.       6.       The property is subject to a first mortgage lien of NATION STAR MORTGAGE,  
10.       CLAIM ## 8 FOR \$165,702.03, which grossly exceeds the home value.

11.       7.       A copy of the Deed of Trust in favor of the First Lender which was recorded with  
12.       Mohave County Recorder is attached hereto as **Exhibit "C"**.

13.       8.       The Property is also subject to a second mortgage lien of in favor of Defendant  
14.       PARTNERS FOR PAYMENT RELIEF DE II LLC per the Proof of Claim 9.

15.       9.       A copy of the Deed of Trust in favor of the Second lender and any assignments which  
16.       was recorded with the Mohave County Recorder is attached as **Exhibit "D"**.

17.       10.       Plaintiffs assert that after applying the first mortgage lien of the current first mortgage  
18.       beneficiary there is no equity remaining for Partners's second mortgage lien to attach to.

19.       11.       Plaintiffs assert that pursuant to 11 U.S.C. §§506(a)(1) and 506(d), Partners's claim  
20.       is entirely unsecured and its lien (Deed of Trust) upon the Debtor's real property is void.

21.       12.       Counsel has had numerous phone conferences with Partners's agent as to the  
22.       valuation of the property and with emails, copy attached as **Exhibit "E"**.

23.       13.       Partners or its agents even tried a notice of eviction claiming the home foreclosure  
24.       was completed, copy attached as **Exhibit "F"**.

25.       14.       Notwithstanding the public record availability of the Assessor valuation, the widely  
26.       publicized real estate devaluation, and the provided information, Partners filed both a proof of claim  
causing Plaintiffs to incur additional sums for attorney's fees.

1       15. This matter arises out of a lending contract, and pursuant to the contracts and the  
2       Arizona State law, A.R.S. § 12-341.01, the prevailing party is entitled to an award of attorney's  
3       fees.  
4

3       16. Further, A.R.S. § 12-1101 and following give a potential for relief to sue Partners  
4       and obtain both legal fees and a quiet title judgment against them on if the Lien is not released.  
5

5       17. Demand was duly made upon Partners and its agents, demanding that the property  
6       and all interest of Partners be Disclaimed and lien be released pursuant to **Exhibit G**.  
7

7       18. By failing to release the Lien, Plaintiffs have further grounds for an award of Costs  
8       and Attorney's fees to be set by this Court; A.R.S. § 12-1103.  
9

9       19. Plaintiffs further allege that the allegations herein establish a cause of action under  
10       the F.D.C.P, 15 U.S.C. § 1692–1692p for outrage, pursing a claim without justification, employing  
11       agents without the protections and warnings required, and thus justifying an award of punitive  
12       damages and relief to the fullest extent of the law.  
13

13       WHEREFORE, Plaintiffs pray that this Honorable Court find in favor of the Plaintiff and  
14       Order the following:  
15

15       A. That there is insufficient equity in the subject real property for the Partners's second  
16       mortgage lien to attach to.  
17

17       B. That the Partners's second mortgage lien is entirely unsecured.  
18

18       C. That upon Completion of the Chapter 13 payments, and a entry of discharge, that the  
19       Lien is removed.  
20

20       D. That the Order of this Court may be recorded and the same shall have the effect of  
21       voiding the lien on the public records.  
22

22       E. That the Partners's claim and proof of claim be deemed an unsecured claim to be paid  
23       according to the Chapter 13 Plan.  
24

24       F. That Partnerss' their agents and assigns failed to disclaim the property within 30 days,  
25       and as such are liable to Plaintiffs as a separate legal theory for legal fees pursuant to A.R.S.  
26       § 12-1103.  
26

- 1           G.     That Plaintiffs' counsel be awarded his costs and attorney's fees.
- 2           H.     That if the matter proceeds by Default, Counsel should be awarded Judgment for his
- 3           legal fees of 4,500.00 plus costs as established.
- 4           I.     That Plaintiffs recovers any additional relief that this Court deems justified and
- 5           appropriate, given the circumstances.
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September 24, 2014

/S/ MARK A. SIPPET, AZ BAR ID 005506  
Attorneys for Debtors

Complaint to Determine Validity of Lien mailed  
first class mail this date: September 24, 2014 to:

Partners for Payment Relief DE II LLC  
3748 W CHESTER PIKE STE 103  
NEWTON SQUARE PA 19073-3252

RUSSELL A. BROWN  
3838 N CENTRAL AVE STE 800  
PHOENIX AZ 85012

Partners for Payment Relief DE II LLC  
C/O STAT AGENT  
ATA CORPORATE SERVICES LLC  
222 DELAWARE AVE STE 1200  
WILMINGTON DE 19801

GARY GILLIN  
ANDREA GILLIN  
2227 LUCILLE AVE  
KINGMAN AZ 86401

ATLANTIC HOME REALTY L.C.  
610 LAUREL ST  
ATLANTIC IOWA 50022

OCULUS REALTY LLC  
333 MAIN ST 2<sup>ND</sup> FLOOR  
GAIITHERSBURG MD 20878

SAFEPOINT FORECLOSURE SERVICES  
10151 DEERWOOD PARK BLVD  
BUILDING 200 STE 250  
JACKSONVILLE FL 32256

INFORMATION544@HAR.COM

PRIORITY POSTING & PUBLICATIONS  
2562 WALDEN AVE STE 103  
BUFFALO NY 14225-4758

PRIORITY POSTINGS AND PUBLICATIONS  
1750 IRVINE BLVD STE 1  
TUSTIN CA 92780

by /s/ Secretary to Mr. Sippel

1  
2 **VERIFICATION**

3 GARY GILLIN and ANDREA GILLIN, each being duly sworn, depose, state, and verify  
4 that the above allegations are true and correct under penalty of perjury.

5   
6 ANDREA GILLIN

7 STATE OF ARIZONA }  
8 County of Mohave }

9 SUBSCRIBED and sworn to this 24<sup>th</sup> day of September, 2014 by the above persons who  
10 personally appeared in front of me, and satisfactorily established their identity to me and authority  
11 to execute this Document.

12   
13 Notary Public



